IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2786 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANGABEN WD/O ARJUNBHAI BHANABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2786 of 1997

MR DHIRENDRA MEHTA for Petitioner No. 1

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondents No. 1-2

MR DEVANG T SHAH for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/10/2001

ORAL JUDGEMENT

Heard Mr.Dhirendra K. Mehta, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP on behalf of the respondent Nos.1 & 2 so also

Mr.Devang T. Shah, learned advocate on behalf of the respondent No.3.

In the present petition, this Court has issued RULE on 3rd October, 1997 and also granted ad-interim relief during the pendency of the present petition.

The brief facts giving rise to the present petition are as under :-

That one Arjunbhai Bhanabhai - husband of the petitioner who was the owner and occupant of the agricultural lands bearing Survey No.68 [Block No.93] and Survey No.29 [Block No.35] of village Simadi of Kamrej Taluka in Surat district, expired on 10-3-1977 leaving behind him the widow Gangaben - the petitioner. Therefore, according to the petitioner, she is the owner and occupier in actual possession of the suit lands in question. On 12-3-1987 the respondent No.3 - Hasmukhbhai made an application which is at Annexure-D under Section 70[b] of the Bombay Tenancy and Agricultural Lands Act with prayer to declare him as protected tenant of the suit lands before the Mamlatdar, Kamrej since 1974-75. However, Mr.Mehta, learned advocate has pointed out the proceedings between the deceased Arjunbhai and one Bhudarbhai, who claimed to be the tenant over the suit lands from 1974-75, came to be concluded by order dated 4-1-1977 of the Mamlatdar, Kamrej and despite of this fact, said Hasmukhbhai also claims tenancy rights for very same period. Thereafter, on 21-10-1987 the respondent No.3 filed an application for injunction before the Mamlatdar and in the said proceedings, interim stay was granted by the Mamlatdar on 30-6-1988 in favour of the respondent No.3. Being aggrieved of the order passed by the Mamlatdar, the petitioner filed an appeal before the Deputy Collector, Olpad. However, on 23-1-1989 the Deputy Collector, Olpad Division remanded the case for fresh decision raising issues as contained in his order. Thereafter, the Gujarat Revenue Tribunal has allowed the Revision Application on 7-2-1990 preferred against the order of the Deputy Collector with a direction to maintain status quo over the suit land and accordingly directed to dispose of the Tenancy Case within two months. Thereafter, the Mamlatdar, Kamrej allowed application of the respondent No.3 declaring him tenant on 28-11-1991. This order of Mamlatdar was challenged by the petitioner before the Assistant Collector, Olpad Division, Surat, who allowed the Revision Application on 31-3-1992 and set aside the order passed by the Mamlatdar declaring the same to be illegal. Thereafter, the order of Assistant Collector dated

31-3-1992 challenged by the respondent No.3 before the Gujarat Revenue Tribunal and the Tribunal has allowed the revision application of the respondent No.3 by order dated 10-2-1997, against which the present petition is filed challenging the order dated 10-2-1997 passed by the Gujarat Revenue Tribunal.

Learned advocate Mr.Mehta submitted that the Gujarat Revenue Tribunal has not considered the contentions and submissions raised by the present petitioner in respect of tenancy right of the respondent No.3. However, the tribunal has considered the question in respect of family members. According to submission made by Mr.Mehta, the respondent No.3 is member of the family of the petitioner and therefore, he is not entitled to tenancy rights upon the land in question. This aspect, according to learned advocate Mr.Mehta, has not been properly appreciated and decided by the Gujarat Revenue Tribunal. The second submission made by learned advocate Mr.Mehta that apart from whether he is family member or not but independent tenancy right of the respondent No.3 has not been established before the lower authority and the Assistant Collector has rightly decided the case but the Tribunal has not considered this aspect properly and decided otherwise, and therefore the order of tribunal is required to be set aside.

As against this, Mr.Devang T. Shah, learned advocate appearing on behalf of the respondent No.3 has submitted that so far as the aspect of family member is concerned, there is no such provision in Hindu Succession Act which covers the respondent No.3 as family member and therefore, he submitted that the tribunal has rightly examined the matter and passed just and proper order in accordance with law. Learned advocate Mr.Shah also submitted that considering the provisions of Section 4[2] of the Act, the respondent No.3 being related to the petitioner, he deemed to be tenant and therefore, there is no need to establish independent tenancy rights of the respondent No.3 even though he cultivates the lands belong to widow.

However, Mr.S.P.Sen, learned AGP for the respondent authority has supported the findings given by the tribunal.

I have considered the submissions made by the learned advocates on behalf of the respective parties. Considering the order passed by the Assistant Collector, Olpad Division, Surat dated 31-3-1992, wherein he discussed all the evidence and passed the order and

accordingly come to the conclusion that the respondent No.3 is not a tenant. This order was challenged by the respondent No.3 before the Gujarat Revenue Tribunal. In light of the order passed by the Assistant Collector, Olpad Division, Surat, contentions which has been raised by the present petitioner before the Tribunal seems to have not been properly appreciated by the tribunal. Apparently, the contentions raised by the petitioner seems to have not properly dealt with by the tribunal and therefore, no finding to that effect has been given and only taking into consideration the aspect of family member and tenancy right of the respondent No.3 has been established or not from the record, has not been discussed by the tribunal. Therefore, there was no finding in respect of the contention raised by the petitioner.

Therefore, according to my opinion, the Tribunal while passing the order has committed error by not examining each and every contention raised before the Tribunal and the tribunal having considered some of the contentions, seems to have passed the order dated 10-2-1997 which requires to be interfered with by this Court by setting aside the order impugned in this petition.

In the result, the present petition is allowed. The order passed by the Gujarat Revenue Tribunal in Revision Application No.83 / 1992 dated 10th February, 1997 is hereby quashed and set aside with directions to the tribunal to restore the Revision Application No.83/ 1992 to its original file and after the revision is restored to its file, the Tribunal is directed to examine all the contentions raised before the tribunal so also the observations made in this order, in accordance with law. However, it is also observed that it is open for the petitioner as well as to the respondent No.3 to raise all the contentions as may be available to them under the law, before the concerned revisional authority. The tribunal is directed to examine all the contentions that may be raised by respective parties in accordance with law and to decide the said revision application within three months from the date of receiving writ of this order. It is also made clear that the Tribunal will examine the matter afresh without being influenced by order passed by this Court. However, learned advocates for the parties before this Court have agreed that the all the parties will co-operate with hearing before the Gujarat Revenue Tribunal. Rule is made absolute to the extent indicated above. The Office is directed to send the writ of this order immediately to the Gujarat Revenue

Tribunal.

Date : 24-10-2001 [H.K.Rathod, J.]

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